Supreme Court, U.S.
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No. 91-453

IN THE

Supreme Court of the United States

October Term, 1991

DAVID H. LUCAS

Petitioner

vs.

SOUTH CAROLINA COASTAL COUNCIL

Respondent

MOTION FOR LEAVE TO FILE, AND BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER'S POSITION TO REVERSE THE OPINION AND ORDER OF THE SOUTH CAROLINA SUPREME COURT AND TO RESTORE DAMAGES AWARDED BY THE TRIAL COURT ON BEHALF OF THE LONG BEACH ISLAND OCEANFRONT HOMEOWNERS ASSOCIATION AND THE COASTAL ADVOCATE, INC.

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SOUTH CAROLINA COASTAL COUNCIL

Respondent

MOTION OF THE LONG BEACH ISLAND OCEANFRONT HOMEOWNERS ASSOCIATION AND THE COASTAL ADVOCATE, INC. FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER'S POSITION TO REVERSE THE OPINION AND ORDER OF THE SOUTH CAROLINA SUPREME COURT AND TO RESTORE DAMAGES AWARDED BY THE TRIAL COURT

The Long Beach Island Oceanfront Homeowners Association and The Coastal Advocate, Inc. move this Court for leave to file a brief *amicus curiae* supporting the position of the petitioner to reverse the opinion and order of the South Carolina Supreme Court and to restore the damages awarded by the trial court.

INTERESTS OF *AMICI*

The Long Beach Island Oceanfront Homeowners Association is an association whose members own oceanfront properties on Long Beach Island, an island approximately 20 miles in length which forms

part of the New Jersey Atlantic Ocean shorefront. The Association has approximately 1,000 members and represents properties with market values estimated to be in excess of $75,000,000.

The Coastal Advocate, Inc. represents approximately 1,000 property owners and businesses on Long Beach Island with ownership of properties on the island having market values estimated to be in excess of $85,000,000.

The properties of the *amici* are threatened from time to time by proposed restrictions similar to those provided by the South Carolina statutes involved in this case which if they were to be adopted would place the *amici* in a *pari passu* position similar to those of property owners in South Carolina and thus they have interests vitally affected by a decision of the United States Supreme Court in this matter.

REASONS FOR GRANTING THE MOTION

The undersigned urges that the motion should be granted because it brings to the Court a discussion which may not be covered by other parties. In short, the issues in this case affect not only property owners where statewide regulation is in effect, but also properties where such legal restrictions may be imposed.

Consents of parties have been requested but none have been obtained at the time this motion was printed to meet the date set by the Court for filing.

Respectfully submitted,

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December 26, 1991

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BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER'S POSITION TO REVERSE THE OPINION AND ORDER OF THE SOUTH CAROLINA SUPREME COURT AND TO RESTORE DAMAGES AWARDED BY THE TRIAL COURT

This brief is presented on behalf of:

The Long Beach Island Oceanfront Homeowners Association whose members own oceanfront properties on Long Beach Island, an island approximately 20 miles in length which forms part of the New Jersey Atlantic Ocean shorefront. The Association has approximately 1,000 members and represents properties with market values estimated to be in excess of $75,000,000.

The Coastal Advocate, Inc. representing approximately 1,000 property owners and businesses on Long Beach Island with ownership of properties on the island having market values estimated to be in excess of $85,000,000.

The purpose of this brief is:

to support the position of appellant David Lucas;

to urge the reversal of the opinion and order of the Supreme Court of South Carolina; and in support thereof

to bring to the court's attention an issue which may not be covered by other briefs.

The issue referred to is the situation in which there are no state restrictions in existence which would circumscribe the right of private property owners but which restrictions have been threatened from time to time and may come into effect. This places New Jersey owners in a *pari passu* position with South Carolina owners and owners in all areas where state restrictions apply.

Long Beach Island consists of a number of boroughs and towns which have been long established on the island. The island has been subjected to extremely beneficial local zoning rules for an extended period of time. The island is subdivided into blocks and lots, and local streets which provide open access to the beach.

The island has a well developed dune system and all houses built on the island are *inshore* of the dunes. In fact, by regulation the dunes are protected from any human crossing and may not be used for any purpose other than the protection which they afford. On the ocean side of the dunes is a wide expanse of beach which is totally open to the public by unrestricted access by multitudinous streets and is freely used by large numbers of the general public. A number of jetties exist which have provided extensive protection from storms.

The island is not a recently developed area and has a long history with settlements on the island existing since Colonial times.[1]

The island is currently subject primarily to local regulation, but there have been continuous attempts to impose state control. The attempts have been in the form of proposed state legislation and two

1. In fact, for Beach Haven, a most interesting incident of the Revolutionary War is reported. Since people on the island have a full view of the ocean and shipping commerce, including coastal traffic from New York City to Philadelphia, local residents during the Revolutionary War acted as spies for General Washington to keep him posted on troop movements between New York City and Philadelphia. The British became aware of this practice and landed troops who killed a number of Beach Haven residents and the incident is cited as a dramatic indication of the long occupation and stable character of the island.

executive orders by successive governors of the state, both of which orders were declared to be unconstitutional and thus void. These attempts have provided for conditions which limit construction on oceanfront (on Long Beach Island, as referred to before, this means behind the dunes) and generally construction within defined distances from the ocean. The proposals have also included prohibitions against constructing houses which may have been 50% destroyed by natural causes.

The justification for the proposals has been for the alleged protection of the shoreline, but the allegations raise serious questions of fact and may be an expression of a generalized doctrine, philosophy, bias or point of view which may be extremely difficult to justify factually.

For example, many places on Long Beach Island are not experiencing erosion and in fact are enjoying accretion.

Furthermore, the plan of the island which provides for open public beaches, bordered by an extensive dune system, behind which are private houses on private property, calls into play the self-interests of private owners. This results in a very successful physical policing of the areas voluntarily by property owners and a pressure by the owners on municipal authorities to do a good job. The consequence is better maintenance, it is submitted, than is usually afforded to public property.

Thus, it is far from clear whether any of the threatened proposals would be in the public interest.

When the public interest is so uncertain, the justification for limiting the rights of property owners becomes very chimerical indeed.

But for the purposes of the Court's consideration, even if the public interest is served, the restrictions threatened to be imposed would clearly amount to deprivation of private property. If the public interest is to be served, it should not be subsidized by particular property owners and, in any event, regardless of theoretical justifications, the imposition of such regulations clearly violates the private

property protections of the Fifth Amendment and the Fourteenth Amendment to the United States Constitution.

Accordingly, this brief urgently requests the Court to reverse the decision of the Supreme Court of South Carolina and to find that the property owner in the *Lucas* case is entitled to compensatory damages.

Respectfully submitted,

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December 26, 1991